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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/886,415      | 06/20/2001  | Frank P. Forbath     | Forbat. F-1         | 7644             |

7590 06/05/2002

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EXAMINER

LINDINGER, MICHAEL L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2841

DATE MAILED: 06/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/886,415

Applicant(s)

FORBATH, FRANK P.

Examiner

Michael L. Lindinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 5 objected to because of the following informalities: the Applicant includes the word "ome" in line 27, page 15 when it is assumed by the Examiner the Applicant meant to write "one". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 2 is rejected under 35 U.S.C. 102(b) as being unpatentable over the Admitted Prior Art (Forbath U.S. Patent No. 4,493,043). The Admitted Prior Art teaches a method of timing childbirth labor contractions comprising the steps of: providing a timing device with a visible display 20, a calculating means U2, a memory device U1, U3 and a selection means 18; selecting an initiation time for each of plurality of labor contractions at the onset thereof; displaying elapsed contraction time during each of the contractions on the visible display; selecting a termination time for each of the labor contractions at the diminution thereof; calculating a contraction time duration for each of

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the contractions; storing each of the time intervals and time durations in the memory; and displaying the time durations and intervals, in sequence, including visual indication distinguishing between time duration display and time interval display (Col. 3, lines 3+; Col. 4, lines 19+; Col. 5, lines 5+; Col. 6, lines 18+).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fresquez U.S. Patent No. 4,711,585 in view of the Admitted Prior Art (Forbath U.S. Patent No. 4,493,043). Regarding Claim 1, the Admitted Prior Art teaches a hand held apparatus for use during pregnancy labor comprising the steps a visible display 20, a calculating means U2, a memory device U1, U3 and a selection means 18, including audible alert within contraction modes alerting the user and others when parameters are met. The Admitted Prior Art does not explicitly teach a handheld apparatus for use during pregnancy labor comprising an enclosure case of essentially rectangular shape providing a lower portion having width enabled for enclosing within the palm of one hand, and an upper portion of greater width than the lower portion, the case further

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comprising a front and back panels, said panels in convergent juxtaposition between a top and bottom surfaces (not explicitly numbered), the front panel providing a display device, actuation buttons, and a sound port. Fresquez teaches a handheld apparatus for use during pregnancy labor comprising an enclosure case 11 of essentially rectangular shape providing a lower portion having width enabled for enclosing within the palm of one hand, and an upper portion of greater width than the lower portion, the case further comprising a front 12 and back 24 panels, said panels in convergent juxtaposition between a top and bottom surfaces (not explicitly numbered), the front panel providing a display device 19, actuation buttons 14-15 (Col. 3, lines 16+; FIG. 1-2). It would have been obvious to a person skilled in the art at the time of the invention to not only adapt the Admitted Prior Art to include a design with an essentially rectangular shape and shoulders that is a conventional method in the art to provide increased grip for the user, as well as to include a sound port to clarify audible signals generated within the enclosure. By providing shoulders, the Applicant is increasing the surface area of the lower portion, thereby increasing friction between the user's hand and the lower portion of the apparatus, thereby providing a better grip to the user.

2. Claims 3-8 rejected under 35 U.S.C. 103(a) as being unpatentable over (Forbath U.S. Patent No. 4,493,043). Regarding Claims 3 and 6, the Admitted Prior Art (Forbath U.S. Patent No. 4,493,043) teaches a method of timing childbirth labor contractions comprising the steps of: providing a timing device with a visible display 20, a calculating means U2, a memory device U1, U3 and a selection means 18, further including steps

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of storing a plurality of childbirth labor practice instruction sets in the memory device, the instruction sets including an early, middle, and late phases of pregnancy phases, as well as displaying and indicating one of the practice sets, and an audible sound to alert when a contraction occurs (Col. 4, lines 19+). The Admitted Prior Art does not explicitly teach the instruction sets including: early labor, active labor, transition labor, and pushing labor. It would have been obvious to a person skilled in the art at the time of the invention to adapt the Admitted Prior Art circuitry to include a specific number and designating characteristics of practice instruction sets. Although the Applicant includes another "phase" or practice set of pregnancy, the length or duration of these practice sets are not explicitly defined, therefore the Admitted Prior Art could easily be adapted to divide three practice phases to four practice phases, highlighting the fact the total time in labor does not change.

Regarding Claims 4-5 and 7, the Admitted Prior Art (Forbath U.S. Patent No. 4,493,043) teaches a method of timing childbirth labor contractions comprising the steps of: providing a timing device with a visible display 20, a calculating means U2, a memory device U1, U3 and a selection means 18; selecting an initiation time for each of plurality of labor contractions at the onset thereof; displaying elapsed contraction time during each of the contractions on the visible display; selecting a termination time for each of the labor contractions at the diminution thereof; calculating a contraction time duration for each of the contractions; storing each of the time intervals and time durations in the memory; and displaying the time durations and intervals, in sequence, including visual

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indication distinguishing between time duration display and time interval display, as well as audible alert warnings provided by the system during the labor pain timer mode and contraction rehearsing mode in response to the programmed microprocessor commands, as well as enabling an alert action when a programmed value matches a recorded/calculated contraction interval and duration values, further including labeling for contraction duration and interval. (Col. 3, lines 3+; Col. 4, lines 19+; Col. 5, lines 5+; Col. 6, lines 18+). The Admitted Prior Art does not explicitly teach a method of selecting at least one alert parameter from contraction duration, labor contraction interval, labor contraction duration quantities, labor contraction interval quantities, and the "and" and "or" function storing the selected at least one alert labor contraction parameter in the memory device. It would have been obvious to a person skilled in the art at the time of the invention to not only recognize that Admitted Prior Art indeed does "select" at least one alert parameter from the set of contraction modes because as each of the contraction modes has a corresponding alert parameter, when a user selects the contraction mode, the user is also in fact "selecting" the alert parameter, but to also adapt the visible display to include a variety of commands and notations for contraction parameters. The Admitted Prior Art does teach the alert means where once a calculated value matched a value or threshold of a predetermined programmed within the microprocessor, an alert means is actuated, subsequently alerting medical personal to assist the pregnant woman involved.

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Regarding Claim 8, the Admitted Prior Art (Forbath U.S. Patent No. 4,493,043) teaches a method of timing childbirth labor contractions comprising the steps of: providing a timing device with a visible display 20, a calculating means U2, a memory device U1, U3 and a selection means 18; selecting an initiation time for each of plurality of labor contractions at the onset thereof; displaying elapsed contraction time during each of the contractions on the visible display; selecting a termination time for each of the labor contractions at the diminution thereof; calculating a contraction time duration for each of the contractions; storing each of the time intervals and time durations in the memory; and displaying the time durations and intervals, in sequence, including visual indication distinguishing between time duration display and time interval display, as well as audible alert warnings provided by the system during the labor pain timer mode and contraction rehearsing mode in response to the programmed microprocessor commands, as well as enabling an alert action when a programmed value matches a recorded/calculated contraction interval and duration values, further including labeling for contraction duration and interval, further including steps of storing a plurality of childbirth labor practice instruction sets in the memory device, the instruction sets including an early, middle, and late phases of pregnancy phases, as well as displaying and indicating one of the practice sets, and an audible sound to alert when a contraction occurs, further including (Col. 4, lines 19+). The Admitted Prior Art does not explicitly teach the instruction sets including: early labor, active labor, transition labor, and pushing labor, nor does Prior Art explicitly teach a method of selecting at least one alert parameter from contraction duration, labor contraction interval, labor contraction



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duration quantities, labor contraction interval quantities, and the “and” and “or” function storing the selected at least one alert labor contraction parameter in the memory device. It would have been obvious to a person skilled in the art at the time of the invention to not only adapt the Admitted Prior Art circuitry to include a specific number and designating characteristics of practice instruction sets, but to also recognize that Admitted Prior Art indeed does “select” at least one alert parameter from the set of contraction modes because as each of the contraction modes has a corresponding alert parameter, when a user selects the contraction mode, the user is also in fact “selecting” the alert parameter, and further to adapt the visible display to include a variety of commands and notations for contraction parameters. Although the Applicant includes another “phase” or practice set of pregnancy, the length or duration of these practice sets are not explicitly defined, therefore the Admitted Prior Art could easily be adapted to divide three practice phases to four practice phases, highlighting the fact the total time in labor does not change. The Admitted Prior Art does teach the alert means where once a calculated value matched a value or threshold of a predetermined programmed within the microprocessor, an alert means is actuated, subsequently alerting medical personal to assist the pregnant woman involved.

***Prior Art***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Torok U.S. Patent No. 5,042,503 discloses a process and apparatus for extended, non-invasive monitoring of uterine contractions, wherein evaluating values obtained may be judged for the likelihood of premature births.
- Handy U.S. Patent No. 5,876,335 discloses a multipurpose pregnancy and labor timing device comprising an output device for conveying a plurality of datum to a human observer such as a current time, day and date, an expected date of birth of the child, an estimated elapsed time period since the conception date of the child, and a variety of other datum values.
- Tomer U.S. Patent No. 5,876,357 discloses a uterine cervix dilation, effacement, and consistency monitoring system comprising a probe comprising a linear caliper and a flexible membrane is applied to a uterine cervix in order to calculate displacement versus normal values to determine likelihood of birth.

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**Conclusion**

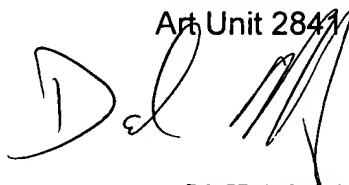
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael L. Lindinger whose telephone number is (703) 305-0618. The examiner can normally be reached on Monday-Thursday (7:30-6).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (703) 308-3121. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7318 for regular communications and (703) 746-7318 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

MLL  
May 29, 2002

Michael L. Lindinger  
Patent Examiner  
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A handwritten signature in black ink, appearing to read 'D. Martin', is written over the printed name and title of David Martin.

**DAVID MARTIN**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2800**